

Department of the Navy, DoD

§ 728.31

(c) *Authorization.* The individual's commanding officer will prepare a letter of authorization addressed to the commanding officer of the MTF concerned.

(d) *ROTC members as beneficiaries of the Office of Workers' Compensation Programs (OWCP).* Under circumstances described therein, render care as outlined in § 728.53 to members of the ROTC as beneficiaries of OWCP.

§ 728.24 Navy and Marine Corps Officer Candidate Programs.

Members of the Reserve Officers Candidate Program and Platoon Leaders Class are entitled to the same medical and dental benefits as are provided members of the Navy and Marine Corps Reserve Components. Accordingly, the provisions of § 728.21 are applicable for such members. Additionally, candidates for, or persons enrolled in such programs are authorized access to naval MTFs for the purpose of conducting special physical examination procedures which have been requested by the Commander, Naval Medical Command to determine their physical fitness for appointment to, or continuation in such a program. Upon a request from the individual's commanding officer, the officer in charge of cognizant Navy and Marine Corps recruiting stations, or officer selection officer, naval MTFs are authorized to admit such persons when, in the opinion of the cognizant officer, hospitalization is necessary for the proper conduct of the special physical examinations. Hospitalization should be kept to a minimum and treatment other than for humanitarian reasons, except as provided in this part, is not authorized.

§ 728.25 Army and Air Force National Guard personnel.

(a) *Medical and dental care.* Upon presentation of a letter of authorization, render care as set forth in AR 40-3 (Medical, Dental, and Veterinary Care) and AFR 168-6 (Persons Authorized Medical Care) to members of the Army and Air Force National Guard who contract a disease or become ill in line of duty while on full-time National Guard duty, (including leave and liberty therefrom) or while traveling to or

from that duty. The authorizing letter will include name, social security number, grade, and organization of the member; type and period of duty in which engaged (or in which engaged when the injury or illness occurred); diagnosis (if known); and will indicate that the injury suffered or disease contracted was in line of duty and that the individual is entitled to medical or dental care. Limit care to that appropriate for the injury, disease, or illness until the resulting disability cannot be materially improved by further hospitalization or treatment.

(b) *Physical examinations.* AR 40-3 and AFR 168-6 also authorize physical examinations for National Guard personnel. Accordingly, when requested by an Army or Air Force National Guard unit's commanding officer, naval MTFs may perform the requested physical examination per the appropriate service directive, subject to the availability of space, facilities, and the capabilities of the staff.

Subpart D—Retired Members and Dependents of the Uniformed Services

§ 728.31 Eligible beneficiaries and health benefits authorized.

(a) *Retired members of the uniformed services.* Retired members, as defined in § 728.2(aa), are authorized the same medical and dental benefits as active duty members subject to the availability of space and facilities, capabilities of the professional staff, and the priorities in § 728.3, except that:

(1) Periodic medical examinations for members on the Temporary Disability Retired List, including hospitalization in connection with the conduct thereof, will be furnished on the same priority basis as care to active duty members.

(2) When vision correction is required, one pair of standard issue spectacles, or one pair of nonstandard spectacles, are authorized when required to satisfy patient needs. Two pairs of spectacles may be furnished only when professionally determined to be essential by the examining officer. Military ophthalmic laboratories will not furnish occupational type spectacles, such as aviation, industrial safety, double segment, and mask insert, to retired

§ 728.31

32 CFR Ch. VI (7-1-08 Edition)

military personnel (NAVMEDCOMINST 6810.1 refers).

(b) *Dependents of members of former members.* Include:

- (1) The spouse.
- (2) The unremarried widow.
- (3) The unremarried widower.
- (4) An unmarried legitimate child, including an adopted child or a stepchild, who either—
 - (i) Has not passed his or her 21st birthday;
 - (ii) Is incapable of self-support because of a mental or physical incapacity that existed before the 21st birthday and is, or was at the time of the member's or former member's death, in fact dependent on the member for over one-half of his or her support; or
 - (iii) Has not passed the 23rd birthday, is enrolled in a full-time course of study in an institution of higher learning approved by the administering Secretary and is, or was at the time of the member's or former member's death, in fact dependent on the member for over one-half of his or her support. (If such a child suffers a disabling illness or injury and is unable to return to school, the child remains eligible for benefits until 6 months after the disability is removed, or until the 23rd birthday is reached, whichever comes first.)
- (5) An unmarried illegitimate child or illegitimate step-child who is, or was at the time of sponsor's death, dependent on the sponsor for more than one-half of his or her support; residing with or in a home provided by the sponsor or the sponsor's spouse, as applicable, and is—
 - (i) Under 21 years of age; or
 - (ii) Twenty-one years of age or older but incapable of self-support because of a mental or physical incapacity that existed prior to the individual's 21st birthday; or
 - (iii) Twenty-one or 22 years of age and pursuing a full-time course of education that is approved per § 728.31(b)(4)(iii).
- (6) A parent or parent-in-law, who is, or was at the time of the member's or former member's death, in fact dependent on the member for over one-half of such parent's support and residing in the sponsor's household.

(7) An unremarried former spouse of a member or former member who does not have medical coverage under an employer-sponsored health plan, and who:

(i) On the date of the final decree of divorce, dissolution, or annulment, had been married to the member or former member at least 20 years during which period the member of former member performed at least 20 years of service creditable in determining that member's or former member's eligibility for retired or retainer pay, or equivalent pay.

(ii) Had been married to the member of former member at least 20 years, at least 15 of which were during the period the member of former member performed service creditable in determining the member's eligibility for retired or retainer pay, or equivalent pay. The former spouse's sponsor must have performed at least 20 years of service creditable in determining the sponsor's eligibility for retired or retainer pay, or equivalent pay.

(A) Eligibility for such former spouses continue until remarriage if the final decree of divorce, dissolution, or annulment occurred before 1 April 1985.

(B) Eligibility terminates the later of: Either 2 years from the date of the final decree of divorce, dissolution, or annulment; or 1 April 1988 for such former spouses whose final decree occurred on or after 1 April 1985.

(iii) An unremarried former spouse of a deceased member of former member who meets the requirements of § 728.31(b)(7)(i) or (ii) may be provided medical and dental care as a dependent when the sponsor:

(A) Died before attaining age 60.

(B) At the time of death would have been eligible for retired pay under 10 U.S.C. 1331-1337 except that the sponsor was under 60 years of age; but the former spouse is not eligible for care until the date the sponsor would have attained age 60;

(C) Whether or not the sponsor elected participation in the Survivor Benefit Plan of 10 U.S.C. 1447-1455.

(c) *Eligibility factors.* Care that may be rendered to all dependents in this subpart D is subject to the availability of space and facilities, capabilities of

Department of the Navy, DoD

§ 728.31

the professional staff, and priorities in § 728.3. Additionally:

(1) Members of the uniformed services must be serving under orders specifying active duty for more than 30 days before their dependents are authorized benefits delineated in § 728.31(d).

(2) A dependent's eligibility begins on the date the member enters on active duty and ends as of midnight of the date the sponsor's period of active duty ends for any reason other than retirement or death. Dependents lose eligibility as of midnight of the date a member is officially placed in a deserter status. Eligibility is restored on the date a deserter is returned to military control.

(3) A dependent (other than a former spouse) of a member or former member who died before attaining age 60 and at the time of death—

(i) Would have been eligible for retired pay under chapter 67 of title 10 U.S.C. but for the fact that the member of former member was under 60 years of age, and

(ii) Had elected to participate in the Survivor Benefit Plan, may not be rendered medical or dental care under the sponsor's entitlement until the date on which such member of former member would have attained age 60.

(4) A spouse, not qualifying as a former spouse, who is divorced from a member loses eligibility for benefits as of midnight of the date the divorce becomes final. This includes loss of maternity care benefits for wives who are pregnant at the time a divorce becomes final. A spouse does not lose eligibility through issuance of an interlocutory decree of divorce even when a property settlement has been approved which releases the member from responsibility for the spouse's support. A spouse's eligibility depends upon the relationship of the spouse to the member; so long as the relationship of husband and wife is not terminated by a final divorce or annulment decree, eligibility continues.

(5) Eligibility of children is not affected by the divorce of parents except that a stepchild relationship ceases upon divorce or annulment of natural parent and step-parent. A child's eligibility for health benefits is not affected

by the remarriage of the divorced spouse maintaining custody unless the marriage is to an eligible service member.

(6) A stepchild relationship does not cease upon death of the member step-parent but does cease if the natural parent subsequently remarries.

(7) A child of an active duty or retired member, adopted after that member's death, retains eligibility for health benefits. However, the adoption of a child of a living member (other than by a person whose dependents are eligible for health benefits at USMTFs) terminates the child's eligibility.

(8) If a member's child is married before reaching age 21 to a person whose dependents are not eligible for health benefits in USMTFs, eligibility ceases as of midnight on the date of marriage. Should the marriage be terminated, the child again becomes eligible for benefits as a dependent child if otherwise eligible.

(d) *Health benefits authorized.* (1) Inpatient care including services and supplies normally furnished by the MTF.

(2) Outpatient care and services.

(3) Drugs (see chapter 21, MANMED).

(i) Prescriptions written by officers of the Medical and Dental Corps, civilian physicians and dentists employed by the Navy, designated officers of the Medical Service Corps and Nurse Corps, independent duty hospital corpsmen, and others designated to write prescriptions will be filled subject to the availability of pharmaceuticals, and consistent with control procedures and applicable laws.

(ii) Prescriptions written by civilian physicians and dentists (non-Navy employed) for eligible beneficiaries may be filled if:

(A) The commanding officer or CO's designee determines that pharmacy personnel and funds are available.

(B) The items requested are routinely stocked.

(C) The prescribed quantity is within limitations established by the command.

(D) The prescriber is in the local area (limits designated by the commanding officer).

§ 728.31

32 CFR Ch. VI (7-1-08 Edition)

(E) The provisions of chapter 21, MANMED are followed when such services include the dispensing of controlled substances.

(4) Treatment on an inpatient or outpatient basis of:

- (i) Medical and surgical conditions.
- (ii) Contagious diseases.
- (iii) Nervous, mental, and chronic conditions.

(5) Physical examinations, including eye examinations and hearing evaluations, and all other tests and procedures necessary for a complete physical examination.

(6) Immunizations.

(7) Maternity (obstetrical) and infant care, routine care and examination of the newborn infant, and well-baby care for mothers and *infants* meeting the eligibility requirements of § 728.31(b). If a newborn infant of an unmarried dependent minor daughter becomes a patient in his or her own right after discharge of the mother, classify the infant as civilian humanitarian non-indigent inasmuch as § 728.31(b) does not define the infant as a dependent of the active duty or retired service member. Therefore, the minor daughter's sponsor (parent) should be counseled concerning the possibility of Secretarial designee status for the infant (see § 728.77).

(8) Diagnostic tests and services, including laboratory and x-ray examinations. Physical therapy, laboratory, x-ray, and other ambulatory diagnostic or therapeutic measures requested by non-Navy employed physicians may be provided upon approval of the commanding officer or designated department heads. Rendering of such services is subordinate to and will not unduly interfere with providing inpatient and outpatient care to active duty personnel and others whose priority to receive care is equal to or greater than such dependents. Ensure that the release of any information to non-Navy employed physicians is in consonance with applicable provisions of SECNAVINST 5211.5C.

(9) Family planning services as delineated in SECNAVINST 6300.2A. Abortions, at the expense of the Government, may not be performed except where the life of the mother would be

endangered if the fetus were carried to term.

(10) Dental care worldwide on a space available basis.

(11) Government ambulance services, surface or air, to transport dependents to, from, or between medical facilities when determined by the medical officer in charge to be medically necessary.

(12) Home calls when determined by the medical officer in charge to be medically necessary.

(13) Artificial limbs and artificial eyes, including initial issue, fitting, repair, replacement, and adjustment.

(14) Durable equipment such as wheelchairs, hospital beds, and resuscitators may be issued on a loan basis.

(15) Orthopedic aids, braces, crutches, elastic stockings, walking irons, and similar aids.

(16) Prosthetic devices (other than artificial limbs and eyes), hearing aids, orthopedic footwear, and spectacles or contact lenses for the correction of ordinary refractive error may not be provided dependents. These items, however, may be sold to dependents at cost to the Government at facilities outside the United States and at specific installations within the United States where adequate civilian facilities are unavailable.

(17) Special lenses (including intraocular lenses) or contact lenses for those eye conditions which require these items for complete medical or surgical management of the condition.

(18) One wig if the individual has alopecia resulting from treatment of a malignant disease: *Provided* the individual has not previously received a wig at the expense of the United States.

(e) *Dependents of reserves.* (1) A dependent, as defined in § 728.31(b), of a deceased member of the Naval Reserve, the Fleet Reserve, the Marine Corps Reserve, or the Fleet Marine Corps Reserve, who—

(i) Was ordered to active duty or to perform inactive-duty training for any period of time.

(ii) Was disabled in the line of duty from an injury while so employed, and

(iii) Dies from such a specific injury, illness, or disease is entitled to the same care as provided for dependents in § 728.31(c).

Department of the Navy, DoD

§ 728.33

(2) The provisions of this subpart D are not intended to authorize medical and dental care precluded for dependents of members of Reserve components who receive involuntary orders to active duty under 10 U.S.C. 270b.

(f) *Unauthorized care.* In addition to the devices listed in § 728.31(d)(16) as unauthorized, dependents are not authorized care for elective correction of minor dermatological blemishes and marks or minor anatomical anomalies.

§ 728.32 Application for care.

Possession of an ID card alone (DD 2 (Retired), PHS-1866-3 (Retired), or DD 1173 (Uniformed Services Identification and Privilege Card)) does not constitute sufficient proof of eligibility. Accordingly, a DEERS check will be instituted per § 728.4 (cc) before medical and dental care may be rendered except in emergencies. When required inpatient or outpatient care is beyond the capabilities of the naval MTF, the provisions of § 728.34 apply. When required inpatient care cannot be rendered and a decision is made to disengage a CHAMPUS-eligible beneficiary, the provisions of § 728.33 apply.

§ 728.33 Nonavailability statement (DD 1251).

(a) *General.* Per DODINST 6015.19 of 26 Nov. 1984, the following guidelines are effective as of 1 Jan. 1985. All previously issued Nonavailability Statement guidelines and reporting requirements are superseded.

(b) *Applicability.* The following provisions are applicable to nonemergency inpatient care only. A DD 1251 is not required:

(1) For emergency care (see paragraph (d)(1)) of this section.

(2) When the beneficiary has other insurance (including Medicare) that provides primary coverage for a covered service.

(3) For medical services that CHAMPUS clearly does not cover.

(c) *Reasons for issuance.* DD 1251's may be issued for only the following reasons:

(1) Proper facilities are not available.

(2) Professional capability is not available.

(3) It would be medically inappropriate (as defined in § 728.2(u)) to re-

quire the beneficiary to use the USMTF and the attending physician has specific prior approval from the facility's commanding officer or higher authority to make such determination.

(i) Issuance for this reason should be restricted to those instances when denial of the DD 1251 could result in a significant risk to the health of any patient requiring any clinical specialty.

(ii) Issuing authorities have discretionary authority to evaluate each situation and issue a DD 1251 under the "medically inappropriate" reason if:

(A) In consideration of individual medical needs, personal constraints on an individual's ability to get to the USMTF results in an unreasonable limitation on that individual's ability to get required medical care, and

(B) The issuing authority determines that obtaining care from a civilian source selected by the individual would result in significantly less limitations on that individual's ability to get required medical care than would result if the individual was required to obtain care from a USMTF.

(C) A beneficiary is in a travel status. The commanding officer of the first facility contacted, in either the beneficiary's home catchment area or the catchment area where hospital care was obtained, has this discretionary authority. Travel in this instance means the beneficiary is temporarily on a trip away from his or her permanent residence. The reason the patient is traveling, the distance involved in the travel, and the time away from the permanent residence is not critical to the principle inherent in the policy. The issuing officer to whom the request for a Nonavailability Statement is made should reasonably determine that the trip was not made, and the civilian care is not (was not) obtained, with the primary intent of avoiding use of a USMTF or USTF serving the beneficiary's home area.

(d) *Guidelines for issuing*—(1) *Emergency care.* Emergency care claims do not require an NAS; however, the nature of the service or care must be certified as an emergency by the attending physician, either on the claim form or in a separate signed and dated statement. Otherwise, a DD 1251 is required by CHAMPUS-eligible beneficiaries